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Decision

Matter of: Murphy Company

File: B-415589; B-415589.2

Date: January 29, 2018

Julie A. Weis, Esq., Michael E. Haglund, Esq., and Christopher T. Griffith, Esq., Haglund Kelley LLP, for the protester.
Paul Bialkowsky, Interfor U.S., Inc., for the intervenor.
Lori Polin Jones, Esq., Department of Agriculture, for the agency.
Nora K. Adkins, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of protester's proposal and best-value tradeoff decision is denied where the agency's evaluation and award decision were reasonable and in accordance with the solicitation criteria.

DECISION

Murphy Company, of Elma, Washington, challenges the award of a contract to Interfor U.S., Inc., of Port Angeles, Washington, by the Department of Agriculture, Forest Service, pursuant to a solicitation for the WWB Stewardship Integrated Resource Timber Contract (contract No. 91710). Murphy challenges the agency's evaluation of its technical approach and argues that the award decision was unreasonable.

We deny the protest.

BACKGROUND

On July 19, 2017, the Forest Service issued a letter to prospective offerors soliciting proposals for the WWB Stewardship Integrated Resource Timber contract (Stewardship contract).¹

¹ An advertisement for the WWB Stewardship contract was also published in a local newspaper on July 19. Agency Report (AR), Tab 3, WWB Stewardship Contract Advertisement, at 60; Contracting Officer Statement (COS) at 1.

AR, Tab 4, Agency Letter to Prospective Offerors, at 61. ² The Forest Service's letter and accompanying prospectus solicited a contractor for the removal of approximately 18,116 tons of Douglas-fir and other coniferous species of timber, and the completion of five mandatory restoration-type service projects meant to improve ecological conditions within the Olympic National Forest. Id.; AR, Tab 5, WWB Stewardship Contract Prospectus. The prospectus provided for the award of a fixed-price contract on a best-value tradeoff basis based upon the evaluation of technical and price proposals.³ AR, Tab 5, WWB Stewardship Contract Prospectus, at 64, 70. With respect to price proposals, the agency advised that the successful offeror would be required to pay the agency for the timber harvest, but would earn stewardship credits, equal to the value of the mandatory service work completed and accepted, which would be offset from the amount due to the agency for the timber harvest. Tab 4, Agency Letter to Prospective Offerors, at 61. Offerors were notified that the minimum acceptable offer for the timber was \$269,169. Id. With respect to technical proposals, the prospectus advised offerors to refer to the Region 6 technical proposal template for information related to the proposal instructions and evaluation criteria. AR, Tab 5, WWB Stewardship Contract Prospectus, at 68-69.

The Region 6 technical proposal template required offerors to address three areas in their technical proposals: (1) technical approach; (2) capability and relevant past performance; and (3) utilization of local work force. AR, Tab 8, Region 6 Technical Proposal Template, 89-90. The technical approach factor included five subfactors: plan of operations; quality control plan and safety; supervision; equipment; and production capability. Id. at 89. The template advised offerors to "present sufficient information to reflect a thorough understanding of the end results and requirements, and a detailed description of the techniques, procedures, and program for achieving the objectives of the specifications/statement of work." Id. at 91. As part of their technical approach, offerors were directed to describe their plan of operations for both product removal and stewardship project work. Id. The template provided that the plan of operations "should be based upon completion [of] all contract requirements." Id. Offerors were also advised to review provisions of the sample contract for operational requirements and restrictions. Id.

As relevant to this protest, the sample contract contained mandatory provisions relating to minimum stump height and log lengths. The stump height requirement was mandated as a minimum of "10 inches above ground level on the uphill side of the tree." AR, Tab 9, Sample Contract, at 142. The sample contract also mandated that "[l]og lengths shall not exceed 40 feet plus trim" . . . and "may be increased only when approved in writing by the Forest Service." Id. at 178.

² For the purposes of this decision, we cite to the sequential number(s) assigned by the Forest Service to each page of the agency report.

³ The technical and price proposals were approximately equal in importance. AR, Tab 8, Region 6 Technical Proposal Template, at 89.

The agency received four offers in response to the agency's solicitation, including offers from Murphy and Interfor. The agency evaluated the proposals as follows:

	Murphy	Interfor
Technical Overall	Acceptable	Exceptional
Technical Approach	Marginal ⁴	Acceptable
Capability and Relevant Past Performance	Acceptable	Acceptable
Utilization of Local Workforce	Exceptional	Exceptional
Timber Value	\$923,191	\$827,177
Total Stewardship Projects	\$39,600	\$34,453

AR, Tab 24, Source Selection Decision at 432-437.

The SSA, who was also the contracting officer, reviewed the ratings of the technical evaluators and made an independent assessment of the strengths and weaknesses of the proposals. Id. at 432-438. The SSA noted that if award was based solely on price, Murphy provided the best value "at \$923,191.36[,] allowing for additional \$883,591.36 of restoration work." Id. at 436-437. The SSA however provided that "[w]hile Murphy Company's price proposal would net a higher dollar value return to the Government, Murphy Company's technical proposal does not represent the best value to the Government." Id. at 438. Thus, the SSA concluded that based on price and technical proposals, Interfor provided the best value to the agency. Id. On September 27, the agency awarded the WWB Stewardship contract to Interfor.

Murphy received notice of the award decision, and on September 29, requested a debriefing. The Forest Service provided a debriefing on October 10. On October 20, Murphy filed this protest.

DISCUSSION

Murphy challenges the agency's evaluation of its proposal and the award decision. The protester argues that the agency's evaluation of Murphy's technical approach was unreasonable. Murphy also alleges that the SSA improperly substituted his judgment for that of the technical evaluators. Murphy asserts that the SSA's award decision in this regard is not reasonable or supported by the solicitation's stated evaluation scheme. We have reviewed all of the protester's allegations and find no basis to sustain the protest. We address the primary allegations herein.⁵

⁴ As discussed below, the technical evaluators assigned an acceptable rating to Murphy's proposal for the technical approach factor. AR, Tab 20, Technical Evaluation Consensus, at 384. The source selection authority (SSA) disagreed with the evaluators' rating and assigned a marginal rating. AR, Tab 24, Source Selection Decision, at 437.

⁵ As a general matter, sales by a federal agency, such as timber sales, are not procurements of property or services, and are therefore not within our Office's bid
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In reviewing protests against allegedly improper evaluations, our Office examines the record to determine whether the agency's evaluation was reasonable and consistent with the evaluation criteria in the solicitation and applicable procurement statutes and regulations. Interfor US, Inc., B-410622, Dec. 30, 2014, 2015 CPD ¶ 19 at 4. On the record before us, we find the agency's evaluation and award decision unobjectionable.

As stated above, the Region 6 template provided that an offeror's technical approach "should be based upon completion [of] all contract requirements." AR, Tab 8, Region 6 Technical Proposal Template, at 91. Offerors were also advised to review provisions of the sample contract for operational requirements and restrictions. Id. Two such operational requirements were minimum stump height (10 inches) and maximum log length (40 feet). AR, Tab 9, Sample Contract, at 142, 178.

Murphy's technical proposal stated that it would "[c]ut stumps as low as possible" and "[t]rees will be cut at stump height, except when visible from Forest Road 2340000. Visible stumps shall be flush-cut (less than or equal to 4.0 inches)." AR, Tab 12, Murphy Technical Proposal, at 301. Murphy also proposed to "whole tree yard[]" the felled trees with a grapple cat. Id. at 302.

The agency's technical evaluators assigned weaknesses to Murphy's proposal because they found "two details [that] might conflict w[ith the] contract:" (1) flush cut stumps along road 2340, and (2) whole tree yarding. AR, Tab 20, Technical Evaluation Consensus, at 384. The evaluators rated Murphy's technical approach acceptable and rated Murphy's technical proposal overall as acceptable. Id. at 383-384.

Murphy argues that the agency's evaluation of its technical approach was unreasonable. Murphy contends that, while its proposal did not specifically comply with the requirements, its proposed approach added value to the government by improving post-project aesthetics and decreasing impacts to the residual forest stand. The protester also alleges that obtaining agency approval of its proposed method was implied in its proposal.

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protest jurisdiction. See 31 U.S.C. § 3551(1)(a). We have recognized, however, that certain transactions can involve both a sale of government property and a procurement of goods or services, and we have taken jurisdiction in these so-called "mixed transaction" cases. See, e.g., Armed Forces Hospitality, LLC, B-298978.2, B-298978.3, Oct. 1, 2009, 2009 CPD ¶ 192 at 6-8. As relevant here, we will also consider protests concerning sales by a federal agency if that agency has agreed in writing to have protests decided by our Office, 4 C.F.R. § 21.13(a) (2014); the Forest Service has expressly agreed to have protests concerning timber sales decided by our Office. Delta Timber Co., B-290710, Sept. 6, 2002, 2002 CPD ¶ 161 at 1 n.1.

We find the agency reasonably evaluated Murphy's technical approach. Murphy's proposal did not meet the agency's requirements for 10 inch minimum stump height and 40 foot maximum tree height. While the protest asserts that Murphy intended to seek agency permission prior to implementing its proposed approach, and that obtaining permission was implied in its proposal, an offeror has the burden of submitting an adequately written proposal that contains all of the information required under a solicitation. Addvetco, Inc., B-412702, B-412702.2, May 3, 2016, 2016 CPD ¶ 112 at 7-8. Where a proposal omits, inadequately addresses, or fails to clearly convey required information, the offeror runs the risk of an adverse agency evaluation. Id. Here, we find no basis to object to the agency's evaluation.⁶

Murphy also alleges that the SSA improperly substituted his judgment for the technical evaluators' conclusions by downgrading its acceptable technical approach rating to marginal. Murphy further asserts that the SSA's decision in this regard is not reasonable or supported by the solicitation's stated evaluation scheme.

Source selection officials have broad discretion to determine the manner and extent to which they will make use of evaluation results, which are merely guides for the source selection official, who must use his own judgment to determine what the underlying differences between proposals might mean to successful performance of the contract. Applied Physical Sciences Corp., B-406167, Feb. 23, 2012, 2012 CPD ¶ 102 at 6. In this regard, source selection officials are not bound by the recommendations of lower-level evaluators. All Points Int'l Distributions, Inc., B-402993, B-402993.2, Sept. 3, 2010, 2010 CPD ¶ 209 at 3, 5. An SSA may disagree with, or expand upon, the findings of lower-level evaluators provided the basis for the evaluation is reasonable and documented. Northrop Grumman Sys. Corp., B-414312 et al., May 1, 2017, 2017 CPD ¶ 128 at 9-10. A protester's disagreement with the agency's evaluation judgments, or with the agency's determination as to the relative merits of competing proposals, does not establish that the evaluation or the source selection decision was unreasonable. Id.

Here, the record demonstrates that the SSA reviewed and concurred with a majority of the evaluator's findings. AR, Tab 24, Source Selection Decision, at 437. However, the SSA disagreed with the evaluator's conclusion that Murphy submitted an acceptable technical approach because Murphy's proposal failed to meet the minimum stump height and maximum log length requirements. Id. Due to these deviations, the SSA concluded that Murphy provided a marginal, not acceptable, technical approach. Id.

⁶ The protester also alleges that the agency should have engaged in clarifications with Murphy to discern its intent with respect to log lengths and stump height. We find no merit to this allegation, as we have previously recognized, clarifications are not required in the context of an award without discussions. A&T Systems, Inc., B-410626, Dec. 15, 2014, 2015 CPD ¶ 9 at 5. (Although agencies have broad discretion as to whether to seek clarifications from offerors, offerors have no automatic right to clarifications regarding proposals.)

On this record, we find no basis to question the reasonableness of the SSA's source selection decision. With respect to the protester's argument that the SSA improperly substituted his judgment for the technical evaluators, we find the SSA's actions to be reasonable and in accordance with the stated evaluation criteria. First, the SSA's decision, that these weaknesses demonstrated a failure to meet the solicitation requirements, is unobjectionable. The solicitation was clear regarding the requirements for 10 inch minimum stump heights and 40 foot log lengths. Murphy's proposal did not comply in this regard. With respect to the protester's assertion that the SSA could not change the rating from acceptable to marginal, as we have previously decided, such determinations are well within the SSA's discretion. Northrop Grumman Sys. Corp., supra, at 9-10; All Points Int'l Distribs., Inc., supra, at 5. Moreover, we find no merit to the protester's allegation that the solicitation in any way restricted the SSA's discretion in this regard. The protester's disagreement with the SSA's judgment does not provide a basis to sustain the protest.⁷

Finally, Murphy challenges the agency's tradeoff decision asserting that the SSA failed to properly consider the monetary benefits associated with Murphy's proposal. We find no support for the protester's allegations. That is, the record is clear that the SSA performed a review of the proposals; the technical evaluators' assessments of the proposals; and conducted a comparative assessment of the proposals. Based on that review, the SSA concluded that the technical benefits associated with Interfor's solution offered the superior choice when compared to the other offerors. As noted above, this assessment included an acknowledgement of Murphy's proposed price. See AR, Tab 24, Source Selection Decision at 438. ("While Murphy Company's price proposal would net a higher dollar value return to the Government, Murphy Company's technical proposal does not represent the best value to the Government.") On the record here, Murphy has failed to establish that the award decision was unreasonable.

The protest is denied.

Thomas H. Armstrong
General Counsel

⁷ Murphy also alleges bias by the SSA against Murphy. We find that the protester has failed to provide sufficient support for its bias allegation. In this respect, government officials are presumed to act in good faith, and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-9. Where a protester alleges bias, it must not only provide credible evidence clearly demonstrating bias against the protester or in favor of the awardee, but must also show that this bias translated into action that unfairly affected the protester's competitive position. Id. Murphy has not met that threshold here.